

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William Moss	Team: Squad #13	CCRB Case #: 201910507	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 11/25/2019 2:00 PM	Location of Incident: 50 Broadway	Precinct: 01	18 Mo. SOL 5/25/2021	EO SOL 1/9/2022	
Date/Time CV Reported Tue, 11/26/2019 3:56 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 12/06/2019 11:49 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			001 PCT
2. POM Angel Ogando	17119	952065	001 PCT
3. POM Enrique Menendez	29787	949324	001 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Donald Geloso	18858	967890	001 PCT
2. POM Nicholas Bruccoleri	07749	960288	001 PCT
3. POM Eugene Uske	19422	960041	001 PCT
4. POM Matthew Kemper	26705	967943	001 PCT
5. POF Alexa Lindo	06482	958821	001 PCT
6. SGT Lynda Chervoni	03594	928109	001 PCT
7. POM Geronimo Tyrell	13283	952308	001 PCT
8. POM John Dileo	20071	962362	001 PCT
9. POM Ronald Wolfgang	30705	964842	001 PCT
10. POM Michael Milazzo	6808	967608	001 PCT

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Abuse: Officers forcibly removed § 87(2)(b) to the hospital.	
B. Officers	Force: Officers used physical force against § 87(2)(b)	
C. Officers	Force: Officers restricted § 87(2)(b) breathing.	
D. Officers	Force: Officers used physical force against § 87(2)(b)	
E. POM Enrique Menendez	Force: Police Officer Enrique Menendez used physical force against § 87(2)(b)	
F. POM Angel Ogando	Off. Language: Police Officer Angel Ogando made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	
G. Officers	Discourtesy: Officers acted discourteously toward § 87(2)(b)	

Case Summary

On November 26, 2019, § 87(2)(b) called IAB and filed this complaint, which the CCRB received on December 6, 2019.

On November 25, 2019, at approximately 2:00 p.m., officers from the 1st Precinct—including Police Officers Angel Ogando, Geronimo Tyrell, Michael Milazzo, Eugene Uske, and Enrique Menendez—removed § 87(2)(b) to the hospital (**Allegation A – Abuse of Authority: Forcible Removal to Hospital**; § 87(2)(g)). Unidentified officers allegedly used physical force against § 87(2)(b) (**Allegation B - Force: Physical Force**; § 87(2)(g)) and restricted his breathing (**Allegation C: Force: Restricted Breathing**; § 87(2)(g)). PO Tyrell, PO Ogando, PO Milazzo and PO Uske took § 87(2)(b) to the ground and handcuffed him (**Allegation D: Force: Physical Force**; § 87(2)(g)). PO Menendez allegedly twisted § 87(2)(b) feet in opposite directions (**Allegation E – Force: Physical Force**; § 87(2)(g)). PO Ogando told § 87(2)(b) “Don’t be a little girl,” and, in response to § 87(2)(b) cursing, said, “What’s next? Suck my dick too?” (**Allegation F – Offensive Language: Gender**; § 87(2)(g)). Officers allegedly acted discourteously toward § 87(2)(b) (**Allegation H – Discourtesy: Action**; § 87(2)(g)). No arrests or summons resulted from the incident.

The investigation obtained body-worn-camera footage (BWC) from eight officers on scene. The footage is in IAs 128-138 (**BRs 1-11**), and is summarized in IAs 176, 178, 183-184, and 186-192 (**BRs 12-22**).

Findings and Recommendations

Allegation A – Abuse of Authority: Officers forcibly removed § 87(2)(b) to the hospital.

The following facts are undisputed: On November 25, 2019, at approximately 2:00 p.m., § 87(2)(b) went to speak with his job coach, § 87(2)(b) at the Center for Employment Opportunities, located at 50 Broadway in Manhattan. § 87(2)(b) had been suspended from his job program, and he wanted to explain why he had missed work. § 87(2)(b) told § 87(2)(b) that he was having personal issues with the mother of his child. § 87(2)(b) also spoke with a social worker, § 87(2)(b) and § 87(2)(b) called 911 based on a statement § 87(2)(b) made to them. Officers and EMS responded, and EMS determined that § 87(2)(b) needed to go to the hospital. § 87(2)(b) refused, and the officers forcibly removed him.

§ 87(2)(b) acknowledged that it was the EMTs’ decision to take him to the hospital (**BR 23**). He denied threatening to harm anyone during his conversation with § 87(2)(b) and § 87(2)(b).

PO Ogando testified that he removed § 87(2)(b) to the hospital because EMS said he needed to go (**BR 24**). No officers told EMS that § 87(2)(b) needed to be removed to the hospital.

The BWC footage confirms that it was EMS’ decision to remove § 87(2)(b) to the hospital. In PO Tyrell’s first BWC video, at the 05:00 minute mark of the media player timestamp (visible at the bottom of the screen), PO Tyrell informs § 87(2)(b) that the officers are waiting for EMS to arrive and that EMS will make the final decision as to whether § 87(2)(b) needs to go to the hospital (**BR 1**). At 35:07, EMS tells § 87(2)(b) that he needs to go to the hospital because of a comment he made to his case manager. They do not specify what the comment was. No officers tell EMS that § 87(2)(b) needs to be removed.

The ICAD for job § 87(2)(b) indicates that the incident was classified as “10-54 EDP” (Emotionally Disturbed Person) (**BR 25**). In such cases, EMS is automatically dispatched to the scene without being called there by officers.

According to § 87(2)(b) medical records, EMS removed him to the hospital because § 87(2)(b) and § 87(2)(b) reported that he threatened to acquire a firearm and shoot his child and the child's mother (BR 26).

NYPD Patrol Guide, Procedure 216-01 requires officers to cooperate with "ambulance/hospital personnel in every reasonable manner" (BR 27). NYPD Patrol Guide, Procedure 221-13 authorizes officers to take into custody civilians whom they believe are "emotionally disturbed" and likely to cause serious injury to themselves or others (BR 28).

When EMS decided that § 87(2)(b) needed to be removed to the hospital as an EDP, the officers were obligated to assist that effort "in every reasonable manner." § 87(2)(g)

Allegation B - Officers used physical force against § 87(2)(b)

Allegation C - Officers restricted § 87(2)(b) breathing.

Allegation D - Officers used physical force against § 87(2)(b)

Allegation E - Police Officer Enrique Menendez used physical force against § 87(2)(b)

It is undisputed that when EMS informed § 87(2)(b) that he needed to go to the hospital, he refused. The officers forcibly restrained him, placed him on a gurney, and removed him to the hospital.

The officers' BWC videos depict the force used. In PO Ogando's first BWC file (BR 3), at the 37:13 minute mark of the media player timestamp (visible at the bottom of the screen), PO Tyrell tells § 87(2)(b) that he either has to walk with EMS willingly to the ambulance or the officers will place him in handcuffs. § 87(2)(b) responds that he will not go. At 38:41, PO Tyrell orders § 87(2)(b) to stand up, and § 87(2)(b) refuses. § 87(2)(b) then crosses his arms. PO Ogando and PO Tyrell approach and grab onto § 87(2)(b) arms and body. The officers gradually place him on the floor. They do not slam him (see also PO Uske's BWC file (BR 6) at the 36:40 minute mark of the media player timestamp (visible at the bottom of the screen). PO Milazzo and PO Uske approach to assist with handcuffing § 87(2)(b) and he tucks his arms underneath his body. After about one minute, the officers successfully pull § 87(2)(b) hands out from underneath his body, handcuff them, and pick him up off the floor. At 41:00, § 87(2)(b) appears to hit his own head against a door in the conference room. The officers' BWC files reveal that no one pushes § 87(2)(b) head or body toward the door. At 46:00, § 87(2)(b) again appears to hit his own head against a wall near the elevators. Though § 87(2)(b) says the officers slammed him, their BWC files show him thrust his own body and head at the wall.

In PO Ogando's second BWC file (BR 4), at the 01:13 minute mark of the media player timestamp (visible at the bottom of the screen), an EMT places a surgical mask over § 87(2)(b) face. The EMT says the mask is because § 87(2)(b) spat. Later, at 04:16, § 87(2)(b) says loudly twice that he cannot breathe. No officers or EMTs are touching him at that point. In PO Tyrell's second BWC file (BR 2), at the 11:35 minute mark of the media player timestamp (visible at the bottom of the screen), an EMT tells § 87(2)(b) twice not to kick. PO Menendez crosses § 87(2)(b) foot over the other and holds both feet down. At 12:45, § 87(2)(b) tells PO Menendez to stop touching his legs, and PO Menendez continues to hold the feet down, one on top of the other. § 87(2)(b) asks why the officer is touching his foot, and PO Ogando responds that it is because § 87(2)(b) kicked. After a few seconds, § 87(2)(b) starts to kick his feet again. PO Menendez places § 87(2)(b) foot back over the other one again. The footage does not show PO Menendez pull § 87(2)(b) feet in opposite directions, nor does it show officers slam § 87(2)(b) on a table or on the floor or push his face into glass. Other than holding § 87(2)(b) arms and feet once he was handcuffed, the officers are not captured using any additional force.

§ 87(2)(b) testimony was inconsistent with the BWC footage in several key respects (**BR 23**). First, he alleged that approximately nine unspecified officers grabbed him and threw him chest-first onto the conference table and then from the table onto the floor. Three to four unknown officers also allegedly pushed his face into a glass window. The officers said § 87(2)(b) spat on them, so they placed a mask over his mouth. § 87(2)(b) never intentionally spat on anyone, but he admitted that he was riled up and that something may have come out of his mouth. § 87(2)(b) told the officers that he could not breathe well through the mask. He did not remember how they responded, but they did not remove the mask. When § 87(2)(b) was on the gurney, an officer bent his feet in opposite directions. § 87(2)(b) had not kicked or moved his feet at all prior to that point.

PO Ogando's testimony was largely consistent with the BWC footage (**BR 24**). He denied slamming § 87(2)(b) on the table or the floor, pushing § 87(2)(b) face into the wall or glass, or observing an officer twist § 87(2)(b) feet in opposite directions. He further confirmed that when the officers were with § 87(2)(b) by the elevator area, § 87(2)(b) leaned his head back and slammed it against the wall. PO Ogando did not recall § 87(2)(b) hitting his head against a wall in the conference room. PO Ogando did not recall hearing § 87(2)(b) say anything about being unable to breathe with the mask on. After the EMTs and officers placed § 87(2)(b) on the gurney, § 87(2)(b) attempted to get out of the restraints by kicking, lifting his knees, and wiggling his shoulders. PO Ogando believed that § 87(2)(b) kicked an officer and an EMT.

§ 87(2)(b) told hospital staff that he had general body aches and pain in his legs, chest, and abdominals, but the hospital records show that he did not have any visible injuries or head trauma (**BRs 26 and 29**).

NYPD Patrol Guide, Procedure 221-01 states that officers may use physical force if "it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances" (**BR 30**). In evaluating whether force is reasonable, the Patrol Guide instructs officers to consider:

a. The nature and severity of the crime/circumstances; b. Actions taken by the subject; c. Duration of the action; d. Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; e. Whether the subject is actively resisting custody; f. Whether the subject is attempting to evade arrest by flight; g. Number of subjects in comparison to the number of MOS; h. Size, age, and condition of the subject in comparison to the MOS; i. Subject's violent history, if known; j. Presence of hostile crowd or agitators; k. Subject apparently under the influence of a stimulant/narcotic which; would affect pain tolerance or increase the likelihood of violence."

Those factors, as applied to this incident, are as follows: EMS determined that § 87(2)(b) needed to be removed to the hospital for the safety of himself and others, and he refused to go willingly. He crossed his arms, tucked his hands under his body, and otherwise stiffened his body to prevent being handcuffed. He resisted in this manner for several minutes. EMS determined that he was enough of a threat to warrant removing to the hospital, though he did not fight the officers or attack anyone. He was not attempting to evade arrest by flight, as he was not under arrest and made no attempts to flee. The officers outnumbered § 87(2)(b) by at least 12-to-1. There were no agitators or hostile crowds nearby, and the officers and § 87(2)(b) were of roughly equal size. PO Ogando did not mention having any previous knowledge of § 87(2)(b) or believing that he was under the influence or a stimulant or narcotic.

As the officers' BWCs were activated throughout the entire incident and did not depict anyone slam § 87(2)(b)

§ 87(2)(b) onto a table or push his face into glass, and as their cameras showed that § 87(2)(b) hit his own head against a wall on two separate occasions—once in the conference room and once near the elevators—§ 87(2)(g)

§ 87(2)(g)

The EMTs determined that § 87(2)(b) was a danger to himself or someone else, and they informed § 87(2)(b) and the officers that he needed to go to the hospital. As § 87(2)(b) repeatedly refused to go willingly, the officers were justified in using some level of force to place him into EMS' custody. The officers were specifically justified in bringing § 87(2)(b) from his chair to the ground, as he tucked his hands underneath his armpits and refused to be handcuffed. They did so § 87(2)(b) grabbing his arms and bringing him to the floor gradually. § 87(2)(g) pulling his hands out from underneath his body and cuffing them once he was on the floor. PO Menendez, § 87(2)(g) holding § 87(2)(b) feet down on the gurney—one on top of the other—as § 87(2)(b) had repeatedly kicked his legs. § 87(2)(g)

Allegation F – Police Officer Angel Ogando made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)

As officers held § 87(2)(b) against a wall and waited for EMS to bring the stretcher, § 87(2)(b) and PO Ogando exchanged words. In PO Tyrell's second BWC file, at the 05:15 minute mark of the media player timestamp (visible at the bottom of the screen), § 87(2)(b) tells PO Ogando, "Shut yo bitch ass up. You a bitch," and PO Ogando replies, "Exactly, that's all you resort to, insulting ... I've heard it all. What's next? Suck my dick too?" Shortly thereafter, at 07:20, § 87(2)(b) tells the officers that he has several bruises, and PO Ogando replies, "What bruises? Don't be a little girl" (BR 2). § 87(2)(b) responds, "Oh, little girl?" and PO Ogando states, "Oh, now he got bruises ..."

§ 87(2)(b) did not mention those statements during his CCRB interview (BR 23).

During PO Ogando's CCRB interview, he said he did not independently recall making the statements captured in the BWC footage, but he acknowledged hearing them on the BWC footage (BR 24). He said, "What's next? Suck my dick too?" because he was anticipating § 87(2)(b) would say that and he wanted § 87(2)(b) to know that he could not be intimidated, as he had already heard every kind of insult. He did not mean to tell § 87(2)(b) to "suck [his] dick." PO Ogando did not recall why he told § 87(2)(b) to "stop being a little girl."

NYPD Patrol Guide, Procedure 203-10 prohibits officers from "using discourteous or disrespectful remarks regarding another person's ... gender [or] gender identity/expression" (BR 31).

PO Ogando told § 87(2)(b) to "stop being a little girl" after § 87(2)(b) complained of bruises on his body. That comment was disrespectful, § 87(2)(g) and was based on § 87(2)(b) gender identity (i.e. his perceived lack of masculinity). PO Ogando did not know why he said that and was unable to provide an explanation during his interview. PO Ogando's use of the word "dick" was also offensive § 87(2)(g). PO Ogando's stated rationale for using that word—that he was anticipating § 87(2)(b) might use it—does not exonerate the conduct, as officers may not justifiably use offensive language because they believe a civilian might also use it. As officers are prohibited from making disrespectful comments based on an individual's gender identity,

§ 87(2)(g)

Allegation G – Officers acted discourteously toward § 87(2)(b)

In PO Ogando's second BWC video, at the 01:40 minute mark of the media player timestamp (visible at the bottom of the screen (BR 4), the officers and EMTs pick § 87(2)(b) up and place him on the stretcher. § 87(2)(b) resists by kicking his legs and moving his knees up and down. Officers and EMTs strap § 87(2)(b) to the stretcher. During this process, § 87(2)(b) pants slip down, and his underwear becomes exposed. The footage does not depict anyone pulling § 87(2)(b) pants down. At 02:35, an EMT pulls § 87(2)(b) pants up so that his underwear is no longer exposed. On the gurney, § 87(2)(b) continues to kick and move his body, causing his underwear to become exposed again. At 05:45, the officers and EMTs roll the stretcher onto the sidewalk and toward the ambulance. § 87(2)(b) states, "You took me in broad daylight with my underwear showing and all that." The officers and EMTs continue rolling the stretcher to the ambulance. At 07:55, PO Ogando and the EMT both pull § 87(2)(b) pants up again.

§ 87(2)(b) alleged that while he was on the stretcher, the officers humiliated him by rolling the gurney onto the public sidewalk with his underwear exposed (BR 23). § 87(2)(b) asked several officers including PO Tyrell and PO Menendez to pull his pants up, but they refused.

As the BWC makes clear, the officers and EMTs did not pull § 87(2)(b) pants down. Rather, that resulted from him wiggling his body on the stretcher and moving his legs up and down. Though in the BWC § 87(2)(b) says his underwear is exposed, he does not specifically ask officers to pull his pants up, and once officers and EMTs realize his underwear is exposed, they twice pull his pants up. § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
- PO Ogando has been a member of service for nine years and has been a subject in one other CCRB complaint involving one allegation, which was not substantiated (BR 34). § 87(2)(g)
- PO Menendez has been a member of service for 10 years and has been a subject in three other CCRB complaints involving six allegations, none of which was substantiated (BR 35). § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming violations of his Fourth and Fourteenth Amendment rights and seeking \$5 million from the City and \$2 million from each of the subject officers (BR 36). No 50-H hearing has been scheduled (BR 37).

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 13

Investigator: William L. Moss
Signature

Inv. Will Moss
Print Title & Name

05/05/21
Date

Squad Leader: Laura Kastner
Signature

IM Laura Kastner
Print Title & Name

05/05/2021
Date